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DEAN ANTHONY NIEDWIECKI

IN THE UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA
San Francisco Division

MORTEZA BENJAMIN RAY KARIMI,

Plaintiff,

vs.

GOLDEN GATE SCHOOL OF LAW, DEAN
ANTHONY NIEDWIECKI, in his official
capacity,

Defendants.

Case No.: **3:17-cv-05702-JCS**

**RESPONSE TO PLAINTIFF'S MOTION
FOR SANCTIONS FOR DEFENDANT'S
VIOLATION OF FEDERAL RULE OF
CIVIL PROCEDURE 5.2(a)**

Judge: Hon. Joseph C. Spero
Trial Date: Not Yet Assigned.
Complaint Filed: October 3, 2017

ATTACHED DOCUMENT(S):

- **DECLARATION OF MICHAEL J. VARTAIN, ESQ.**

1 Defendants Golden Gate School of Law and Dean Anthony Niedwiecki (collectively, “the
2 Law School”) submit this response to Plaintiff *Pro Se* Morteza Benjamin Ray Karimi’s
3 (“Plaintiff”) motion to seal from the Court’s docket Exhibit R (Dkt. No. 29-18) in support of the
4 Law School’s opposition to Plaintiff’s temporary restraining order and preliminary injunction,
5 and for sanctions for Defendants’ violation of Federal Rule of Civil Procedure 5.2(a).

6 Plaintiff’s motion to seal the transcript is moot. The Court already sealed Docket entry
7 29-18 by its Order of July 27, 2018 (Dkt. No. 81), and the Law School already has filed a corrected
8 version of “Exhibit R” that redacts the relevant private information. (Dkt. No. 79.)

9 With respect to Plaintiff’s motion for sanctions, first, the Law School responds that it did
10 not violate the Family Educational Rights and Privacy Act (FERPA) by filing a copy of the
11 transcript with the court. (20 U.S.C. § 1232g.) Disclosure of student transcripts to the courts is
12 legally permissible under the Federal regulations, which provide that: “If a parent or eligible
13 student initiates legal action against an educational agency or institution, the educational agency
14 or institution may disclose to the court, without a court order or subpoena, the student’s education
15 records that are relevant for the educational agency or institution to defend itself.” (34 C.F.R. §
16 99.31(a)(9)(iii)(B).)

17 Plaintiff initiated this action against the Law School by filing of the Complaint on October
18 3, 2017. (Dkt. No. 1; Declaration of Michael J. Vartain (“Decl. Vartain”), ¶ 5.) Plaintiff thereby
19 placed his educational record into the public record himself, and in turn waived any privacy
20 protection afforded to him under FERPA as to his student educational records with the Law
21 School.

22 On December 9, 2017, Plaintiff filed a Motion for Preliminary Injunction and Temporary
23 Restraining Order seeking in part to cease all disciplinary proceedings against him at the Law
24 School and to enjoin the Law School from altering his student record. (Dkt. No. 18, p. 4:9¹)
25 Plaintiff argued that “[i]f a temporary restraining order and a preliminary injunction is not granted
26
27

28 ¹ References to Plaintiff’s Motion adopt the page number designated by the Court.

1 . . . his chances of enrollment at another law school will be virtually impossible.” (Dkt. No. 18,
2 p. 8:10-11; Decl. Vartain, ¶¶ 7-8.)

3 The Law School filed its opposition on December 22, 2017, which included the
4 Declaration of Steven Lind, the Law School’s registrar (Dkt. No. 26) and Plaintiff’s transcript as
5 “Exhibit R” as evidence to show that as of the time of the filing, the transcript of Plaintiff
6 contained no negative markings that could affect Plaintiff’s admission to another institution. The
7 filing was thus highly relevant to the Law School’s defense. (Decl. Vartain, ¶ 10.)

8 In filing the declaration, the Law School’s counsel did not see that the transcript also
9 contained the day, month and year of Plaintiff’s date of birth. (Decl. Vartain, ¶ 11.)

10 As soon as the Law School became aware of the oversight and learned of Plaintiff’s
11 objection to the disclosure of his date of birth, the Law School’s counsel filed a corrected version
12 of “Exhibit R” that redacted the entirety of Plaintiff’s name and birth date so that such information
13 is not publically available on the court’s docket. (Dkt. No. 79.) As indicated above, the Court
14 has already sealed “Exhibit R” (Dkt. No. 29-18), and in turn, all of the content in the original
15 filing is no longer publically available on the Court’s docket. (Decl. Vartain ¶¶ 12, 13.)

16 Plaintiff has demonstrated no damage to him that was caused and there is absolutely no
17 showing that the Law School’s counsel had an improper motive in its filing.

18 Sanctions are not warranted in this situation.

19
20 DATED: July 31, 2018

VARTAIN LAW GROUP

21 BY: /s/Michael J. Vartain
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